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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,445	10/30/2003	Eric T. Shuler	020824-006610US	2847

20350 7590 06/01/2005

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EXAMINER
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SUHOL, DMITRY

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/699,445

Applicant(s)

SHULER ET AL.

Examiner

Dmitry Suhol

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/03/03, 11/18/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 10-11, 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood '980 in view of Miller '902. Wood discloses an interactive educational toy containing most of the claimed elements including with reference to claims 1 and 17, attaching (as required by claim 10) an indicium (letters 26) containing structure including an indicium and a first attachment element (cols. 3-4, lines 67 and 1, respectively), a base unit (book 10 and card 34) including a housing (portions 12, 14, 16) having a first attachment element (cols. 3-4, lines 67 and 1, respectively), a receiving region (area 12), a speaker (20) coupled to a processor (col. 5, lines 25-36), a reader coupled to the processor unit (col. 4, lines 48-49). The indicium being three-dimensional, as required by claim 3, is described in col. 3, lines 59-60. The indicium being letters representing the alphabet, as required by claims 4 and 5, are shown in figure 1 as letters 26. Indicum containing structure comprising a part of an animal, as required by claim 6, is shown in figure 4A as animal 77. The base unit including a window that is cooperatively structured to receive a back structure of the indicium containing structure, as required by claims 7 and 15, are shown as recesses 28. The

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step of pressing the indicium after attachment, as required by claim 11, is described at col. 5, lines 47-52. A memory unit, as required by claims 13 and 16, is described in col. 3, lines 17-20 and col. 5, lines 31-33. The base unit comprising a window sized to receive two or more indicium containing structures (window 35), as required by claims 14, is show in figure 1.

Wood lacks the teaching of a second attachment element coupled to the housing as required by claim 1, where the second attachment element is a magnet as required by claim 2 and the step of attaching the base unit to a vertical surface as required by claim 10. However, Miller discloses an educational toy which teaches that it is known to provide such toys with an attachment element on the rear surface for the purpose of attaching the device to a vertical surface (col. 4, lines 12-18). Therefore it would have been obvious to one having ordinary skill in the art, at the time of the claimed, invention to have provided the rear surface of the educational toy of Wood with an attachment element for the purpose of attaching the toy to a vertical surface so that the toy may not be mishandled by users who have limited dexterity.

Claims 2, 12 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood '980 and Miller '902, as stated above, and further in view of Pridgen '175. Wood, as modified by Miller, discloses all of the claimed features, as stated above, and further including ordered indicium being the alphabet as required by claims 18-19 (figure 1, indicium 26 and card 33, where sequencing is touched upon in col. 5, lines 30-33). Audio associated with the indicium is described at col. 5, lines 33-

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36. The references fail to teach the second attachment element being a magnet as required by claims 2 and 17 and attachment of the device to a refrigerator door as required by claim 12. However, Pridgen discloses an interactive educational toy which teaches that it is know to use a variety of attachment elements located at the rear surface of the toy housing including a magnet for the purpose of attachment to a variety of surfaces including a refrigerator (col. 2, lines 1-5 and col. 2, lines 41-44). Therefore it would have been obvious to utilize a magnet as an attachment element with the toy of Wood, as modified by Miller, for the purpose of attaching to a variety of surfaces including a refrigerator.

Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wood '980 and Miller '902, as stated above, and further in view of Lee et al '255. Wood, as modified by Miller above, discloses most of the claimed element as stated above, and further including that the indicium back structure may cooperate with the touch sensitive surface of the housing (10) through a variety of means (col. 4, lines 11-21). Lee discloses an interactive educational device, like that of Wood, which teaches that it is know to utilize a structural code on the indicium (figure 40) in order to depress upwardly biased switches (45). Therefore it would have been obvious to utilize structural code and upwardly biased depressible switches in the toy of Wood since Wood clearly states that his switches may be any type of switch and activated in any desired manner (col. 4, lines 11-21).

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dmitry Suhol whose telephone number is 571-272-4430. The examiner can normally be reached on Mon - Friday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571)272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dmitry Suhol  
Examiner  
Art Unit 3714

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